

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0285P

Sales & Use Tax

Calendar Years 1995, 1996, & 1997

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the penalty assessed.

STATEMENT OF FACTS

The penalty was assessed on a use tax assessment resulting from a Department audit for the calendar years 1995, 1996, & 1997.

The taxpayer is in the landscape business. The taxpayer is an S-Corp owned by two Indiana residents. The company employs 40 to 50 people. The business operates year round with snow removal in the winter. There is one location that is in Indiana.

I. **Tax Adminstration** – Penalty

DISCUSSION

The taxpayer argues the penalty should be waived as the error in the audit report was a result of unintentional misinterpretation of Indiana tax regulations and unintentional clerical errors.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or

regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer’s penalty protest is denied.